

of the peace, in any court of law in this State shall abate by the death of either or any of the parties to such action; but upon the death of any defendant, the action shall be continued and the heir or executor of the defendant, or other person interested on the part of the defendant, may appear to such action; and in case the proper person to defend doth not appear at the court at which the death is suggested, the plaintiff may issue a summons, returnable to the next court, directed to the proper person to defend such action; and upon such summons being served, the person summoned shall appear. This not to apply to actions for injuries to the person where the defendant dies, nor to actions for slander.

#### Particular Cases.

The effect of act of 1888, ch. 262 (see sec. 30), is to prevent an action for personal injuries caused by neglect or default from abating by death of plaintiff before final judgment. History of this section. This and the following section construed in connection with art. 67, sec. 1, and art. 93, sec. 106. *Stewart v. United, etc., Co.*, 104 Md. 334. And see *B. & O. R. R. Co. v. Ritchie*, 31 Md. 199; *White v. Safe Dep. & Tr. Co.*, 140 Md. 598.

Prior to act of 1888, ch. 262 (see sec. 30), an action could not be maintained by husband to recover damages for killing of his wife. The act of 1888, ch. 262, had no application where plaintiff died before its adoption. *Harvey v. B. & O. R. R. Co.*, 70 Md. 324.

Where partners bring suit and one of them dies pending the action, it survives to living plaintiff and subsequent proceedings should be in name of the survivor alone. The continued use of name of deceased plaintiff, is a mere irregularity and not fatal. *Billingslea v. Smith*, 77 Md. 521.

Upon death of a plaintiff in a suit to recover damages for interference with enjoyment of property, and for injuries to property, the suit survives to his personal representatives. *Baltimore Belt R. R. Co. v. Sattler*, 105 Md. 269. And see *Keirle v. Shriver*, 11 G. & J. 405. Cf. art. 50, sec. 4, *et seq.*

Under act of 1801, ch. 74, an executor may maintain an action of trespass, *q. c. f.*, for a trespass to his testator's real estate in his lifetime. The term "personal action" defined. *Kennerly v. Wilson*, 1 Md. 107.

As to the effect of act of 1801, ch. 74, upon an action of ejectment, see *Carroll v. Norwood*, 5 H. & J. 173.

This section applied in an action of trover against administrators for an alleged conversion by their intestate. *Brummett v. Golden*, 9 Gill, 97.

Upon death of one caveator, surviving caveators may prosecute the proceedings. *Diffenderfer v. Griffith*, 57 Md. 84. But see art. 93, sec. 226.

The act of 1785, ch. 80, held to have no application to a petition for mandamus against an official who, pending the action, dies or retires from office. *United States v. Butterworth*, 169 U. S. 600.

If the defendant dies pending an action by the husband for an assault and battery on his wife, the action abates. *Ott v. Kaufman*, 68 Md. 57.

Suit may not be brought under this article or under art. 67, sec. 1, or art. 93, sec. 106, by husband of a woman who was killed by a man, since deceased, against personal representative of latter. "*Actio personalis moritur cum persona.*" Meaning of "injuries to the person." *Demczuk v. Jenifer*, 138 Md. 490. And see *White v. Safe Dep. & Tr. Co.*, 140 Md. 599.

#### Generally.

This section applies only to actions at law strictly so called, and does not apply in the trial of issues from the orphans' court. (See art. 93, sec. 226). *Diffenderfer v. Griffith*, 57 Md. 84.

The act of 1861, ch. 44 (amending art. 93, sec. 106), although not expressly amending this section, by necessary implication does amend it. This section referred to in construing art. 93, sec. 106—see notes thereto. *Clark v. Carroll*, 59 Md. 183.

If representative of deceased defendant does not suggest his death and appear at next term after such death, plaintiff must do so not later than second term after he learns of defendant's death. *Shipley v. Johns*, 72 Md. 544.

This section only applies to actions instituted in the life time of alleged wrongdoer. *White v. Safe Dep. & Trust Co.*, 140 Md. 598.